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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**Erwin Hacker et al.**

Serial No.: 09/371,769

Filed: August 10, 1999

Art Unit: 1616

Examiner: Pryor, Alton Nathaniel

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Atty. Docket No.: 514413-3765

**HERBICIDAL COMPOSITIONS  
FOR TOLERANT OR  
RESISTANT COTTON CROPS**

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**BRIEF ON APPEAL**

SIR:

This brief is submitted in support of the Notice of Appeal filed on October 26, 2011, in response to the Final Office Action mailed March 26, 2011. A petition for a five-month extension of time is filed concurrently herewith.

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**I. REAL PARTY IN INTEREST**

The real party in interest in the above-identified application is the Assignee, HOECHST SCHERING AGREVO GMBH, D-13509 BERLIN, GERMANY, as evidenced by an Assignment recorded at Reel/Frame No. 010382/0328 for U.S. Application Serial No. 09/371,769.

**II. RELATED APPEALS AND INTERFERENCES**

No interference is known to the Appellant, the Appellant's legal representative, or Assignee which will directly affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

### **III. STATUS OF ALL CLAIMS**

The claims were last amended in the Amendment/Response filed on February 18, 2011, in which Claims 79-116 were newly added. Claims 79 and 107 are the sole independent claims, with Claims 78-106 and 108-116 each being ultimately dependent from Claims 79 and 107. Claims 81-98, 105, 106, 109, 110, 113, and 114 stand withdrawn. Claims 1-78 stand previously canceled. Thus, Claims 79-116 are currently pending.

Claims 79, 80, 103, 104, 107, 108, 115, and 116 are each rejected by Examiner under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,180,563 to Rüegg et al. ("Rüegg"). Claims 99-102, 111, and 112 are each objected to by Examiner as being dependent upon a rejected base claim. However, Examiner has conceded that Claims 99-102, 111, and 112 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants respectfully note that Examiner states that Claims 89 and 90 are withdrawn. This, however, is patently incorrect. In particular, Claims 89 and 90 relate to similar subject matter as Claims 111 and 112, which Examiner has not withdrawn, and in fact has indicated would be allowable if rewritten in independent form. As such, Claims 89 and 90 should not be considered withdrawn, but rather should be included in the current objection to Claims 99-102, 111, and 112.

**IV. STATUS OF AMENDMENTS**

The claims were last amended in the Amendment/Response filed on February 18, 2011, in response to the non-final Office Action dated August 18, 2010. Examiner then issued a final Office Action on April 26, 2011. As such, the claims presented in Applicant's February 18, 2011 Amendment/Response represents the current claim set.

## V. SUMMARY OF INVENTION

The invention is in the field of the crop protection products which can be employed against harmful plants in tolerant or resistant crops of cotton and which comprise, as herbicidally active substances, a combination of two or more herbicides. Application, P. 1, Lns. 8-10.

The introduction of tolerant or resistant cotton varieties and cotton lines, in particular transgenic cotton varieties and cotton lines, adds novel active substances which per se are not selective in conventional cotton varieties, to the conventional weed control system. Application, P. 1, Lns. 13-15. The active substances are, for example, the known broad-spectrum herbicides such as glyphosate, sulfosate, glufosinate, bialaphos and imidazolinone herbicides [herbicides (A)], which can now be employed in the tolerant crops developed specifically for them. Application, P. 1, Lns. 15-18. The efficacy of these herbicides against harmful plants in the tolerant crops is high, but depends – similarly to other herbicide treatments – on the nature of the herbicide employed, its application rate, the preparation in question, the harmful plants to be controlled, the climatic conditions, the soil conditions etc. Application, P. 1, Lns. 18-22. Furthermore, the herbicides exhibit weak points (zero effect) against specific species of harmful plants. Application, P. 1, Lns. 22-23. Another criterion is the duration of action, or the degradation rate of the herbicide. Application, P. 1, Lns. 23-24. If appropriate, changes in the sensitivity of harmful plants, which may occur upon prolonged use of the herbicides or within a geographical limited area, must also be taken into consideration. Application, P. 1, Lns. 24-26. The loss of action against individual plants can only be compensated for to some extent by higher application rates of the herbicides, if at all. Application, P. 1, Lns. 26-28. Moreover, there is always a demand for methods to achieve the herbicidal effect with lower application rates of active substances. Application, P. 1, Lns. 28-30. A lower application rate not only reduces the amount of an active substance required for application, but as a rule, also reduces the amount of formulation auxiliaries required. Application, P. 1, Lns. 30-32. Both reduce the economic outlay and improve the eco-friendliness of the herbicide treatment. Application, P. 1, Lns. 32-33.

One possibility for improving the use profile of an herbicide may consist in combining the active substance with one or more other active substances which contribute

the desired additional properties. Application, P. 2, Lns. 2-4. However, the combined use of a plurality of active substances does not infrequently lead to phenomena of a physical and biological incompatibility, for example lacking stability of a coformulation, decomposition of an active substance or antagonism of the active substances. Application, P. 2, Lns. 4-7. In contrast, what is desired are combinations of active substances with a favorable profile of action, high stability and as synergistic an increased action as possible, which allows the application rate to be reduced in comparison with the individual application of the active substances to be combined. Application, P. 2, Lns. 7-11.

Surprisingly, it has now been found that active substances from the group of the abovementioned broad-spectrum herbicides (A) in combination with other herbicides 15 from group (A) and, if appropriate, specific herbicides (8) interact especially favorably when they are employed in the cotton crops which are suitable for the selective use of the first-mentioned herbicides. Application, P. 2, Lns. 13-17.

The invention is based on the common inventive concept of selective weed control in cotton crops where the combination herbicides (A) + (B) have synergistic action against the weeds, and where the cotton crops are sufficiently tolerant to the action of (A) + (B). A specific condition of the cotton crops is that all compounds (A) are so-called "total herbicides" (i.e., normally applied non-selectively against plants (including cotton crop plants)), so that the tolerance of the cotton crop plants to the compounds (A) can only be achieved by specific tolerance genes introduced by genetic engineering or through specific mutations.

Such tolerant cotton plants have been developed for compounds (A) and are well described or even are commercially available.

Such cotton plants having a tolerance to compounds (A) are only known to have sufficient tolerance to compounds (A) in case a compound (A) is applied alone without applying other potentially damaging active ingredients. As such, it is not known whether the compounds (A) can be applied to such cotton plants with sufficient crop safety when applied together with other active ingredients which may cause phytotoxicity in principle, such as herbicidal active ingredients.

Moreover, the problem to be solved by the inventors has been not only to find herbicide combinations (A) + (B) having no or low phytotoxicity on "tolerant" cotton plants,



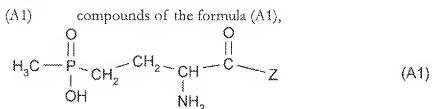
but also to find suitable combination herbicides (B) for compounds (A) so that the combinations provide valuable enhance synergistic herbicidal action against weeds typical in cotton crops.

The invention has been generally described in the specification and supported specifically by some working examples.

Because of the fact that synergistic effects are hardly predictable, as is also the phytotoxicity or crop safety of cotton crops to the synergistic herbicidal combinations (A) + (B), the Declaration of Dr. Hacker was filed which supports the teaching of the present patent application.

The invention therefore relates to the use of herbicide combinations for controlling harmful plants in cotton crops, wherein the herbicide combination in question has a synergistically active content of

- (A) one or more broad-spectrum herbicides from the group of the compounds consisting of



in which Z is a radical of the formula -OH, or the salts thereof, and

- (B) one or more herbicides from the group of the compounds which consists of

- (B1) norflurazon, clomazone and trifluralin,  
(B2) bispyribac and its salts and pyriithiobac and its salts,  
(B3) quizalofop-P and its esters, quizalofop and its esters, fenoxaprop-P and its esters, fenoxaprop and its esters, fluazifop-P and its esters, fluazifop and its esters, and propaquizafop and  
(B4) sethoxydim, cycloxydim and clethodim,

and the cotton crops are tolerant to the herbicides (A) and (B) contained in the combination, optionally in the presence of safeners. See Application, P. 2, Ln. 19 – P. 4, Ln. 6; P. 10, Lns. 31-33; P. 11, Lns. 17-22; P. 12, Ln. 11 – P. 13, Ln. 23.

The synergistic effects are observed when the active substances (A) and (B) are applied together, but can also be observed upon split application (splitting). Application, P. 4, Lns. 8-9. Another possibility is to apply the herbicides or herbicide combinations in several portions (sequential application), for example after pre-emergence applications, followed by post-emergence applications or after early post-emergence applications, followed by applications at medium or late post-emergence. Application, P. 4, Lns. 9-13. Preferred is the simultaneous application of the active substances of the combination in question, if appropriate in several portions. Application, P. 4, Lns. 13-15. However, a staggered application of the individual active substances of a combination is also possible and may be advantageous in individual cases. Application, P. 4, Lns. 15-17. Other crop protection agents such as fungicides, insecticides, acaricides and the like, and/or different auxiliaries, adjuvants and/or fertilizer applications may also be integrated into this system application. Application, P. 4, Lns. 17-19.

The synergistic effects allow the application rates of the individual active substances to be reduced, a more potent action against the same species of harmful plant combined with the same application rate, the control of species to which the action has hitherto not extended (zero effect), an extended application period and/or a reduced number of required individual applications and – as a result for the user – economical and ecologically more advantageous weed control systems. Application, P. 4, Lns. 21-26.

For example, the combinations of (A)+(B) according to the invention allow synergistically increased effects which far and unexpectedly exceed the effects which can be achieved with the individual active substances (A) and (B). Application, P. 4, Lns. 28-30.

Independent Claims 79 and 107 are supported by each of the above cited and described portions of the Specification, and in particular by: P. 2, Ln. 19 – P. 4, Ln. 6; P. 10, Lns. 31-33; P. 11, Lns. 17-22; and P. 12, Ln. 11 – P. 13, Ln. 23.

**VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether Claims 89 and 90 should be withdrawn.
2. Whether Claims 79, 80, 103, 104, 107, 108, 115, and 116 are unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,180,563 to Rüegg et al. ("Rüegg").
3. Whether Claims 89, 90, 99-102, 111, and 112 should be allowed as being dependent from an allowable base claim.
4. Whether Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114 should each be rejoined and allowed as being dependent from an allowable base claim.

## VII. ARGUMENT

### A. SUMMARY OF RELEVANT LAW

The determination of obviousness rests on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In determining obviousness, four factors should be weighed: (1) the scope and content of the prior art, (2) the differences between the art and the claims at issue, (3) the level of ordinary skill in the art, and (4) whatever objective evidence may be present. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. The Examiner carries the burden under 35 U.S.C. § 103 to establish a prima facie case of obviousness and must show that the combination of the references relied on teach or suggest all of the limitations of the claims.

To establish a prima facie case of obviousness, the Examiner must also identify an explicit reason that would have prompted a person of ordinary skill in the art to combine the teachings of the cited references. *K.S.R. Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“The Examiner must determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit.*”) The Supreme Court has emphasized that “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (emphasis added).

### B. CLAIMS 89 AND 90 SHOULD BE WITHDRAWN

As mentioned above in the Status of All Claims section, Examiner states that Claims 89 and 90 are withdrawn. This, however, is patently incorrect. In particular, Claims 89 and 90 relate to similar subject matter as Claims 111 and 112, which Examiner has not withdrawn, and in fact has indicated would be allowable if rewritten in independent form. As such, Claims 89 and 90 should not be considered withdrawn, but rather should be included in the current objection to Claims 99-102, 111, and 112 as allowable but for their dependency upon a rejected base claim.

**C. CLAIMS 79, 80, 103, 104, 107, 108, 115, AND 116 ARE NOT UNPATENTABLE UNDER 35 U.S.C. § 103(A) AS BEING OBVIOUS OVER U.S. PATENT NO. 6,180,563 TO RUEGG ET AL. ("RUEGG")**

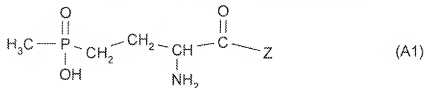
On page 2 of the current Office Action, Examiner rejects Claims 79, 80, 103, 104, 107, 108, 115, and 116 under 35 U.S.C. § 103(a) as being unpatentable over Ruegg. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Independent Claim 79 states:

"A method for controlling harmful plants in cotton crops, which comprises applying a herbicide combination to the harmful plants or to the area where the harmful plants reside, wherein the herbicidal combination comprises a synergistically active content of

"(A) one or more broad-spectrum herbicides from the group of the compounds consisting of

"(A1) compounds of the formula (A1),



"in which Z is a radical of the formula -OH, or the salts thereof, and

"(B) one or more herbicides from the group of the compounds which consists of

"(B1) norflurazon, clomazone and trifluralin,

"(B2) bispyribac and its salts and pyriithiobac and its salts,

"(B3) quizalofop-P and its esters, quizalofop and its esters, fenoxaprop-P and its esters, fenoxaprop and its esters, fluazifop-P and its esters, fluazifop and its esters, and propaquizafop and

"(B4) sethoxydim, cycloxydim and clethodim,

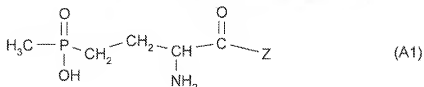
“and the cotton crops are tolerant to the herbicides (A) and (B) contained in the combination, optionally in the presence of safeners.”

Similarly, independent Claim 107 states:

“A herbicidal composition which comprises

“(A) one or more broad-spectrum herbicides from the group of the compounds consisting of

“(A1) compounds of the formula (A1),



“in which Z is a radical of the formula -OH, or the salts thereof, and

“(B) one or more herbicides from the group of the compounds which consists of

“(B2) bispyribac and its salts and pyriithobac and its salts, and

“(B4) cycloxydim and clethodim.”

### ***1. The Teachings of Rüegg Do NOT Render the Claims Obvious.***

Rüegg refers to synergistic mixtures of glufosinate or glyphosate with a specific type of sulfonylurea compound (trifloxysulfuron sodium salt). However, Applicants' claimed method of controlling harmful plants and compositions thereof do not include trifloxysulfuron sodium salt as a component of the composition used or claimed; the claims in fact, do not even refer generically to sulfonylurea compounds. Moreover, Rüegg only suggests that there is synergism when glufosinate or glyphosate with a specific type of sulfonylurea compound (trifloxysulfuron sodium salt) are combined together; not for other combinations as such, the applicants' claimed invention in unobvious over Rüegg.

Applicants previously provided a declaration by Dr. Erwin Hacker (“the Hacker Declaration”) which shows evidence of unexpected results in controlling harmful plants by using representative examples of (B) herbicides in combination with glufosinate. A copy of the Hacker declaration is enclosed herewith as Exhibit B. In each instance, a greater than expected effect is achieved and with little to no damage effected in

the desired cotton crop. The declaration provides a further indicia of non-obviousness over Rüegg.

Examiner responds by asserting that the data in the specification and declaration for the combination of glufosinate and clethodim is not convincing of unexpected results, asserting that the expected value is too close to the observed value to declare a synergy. This, however, is clearly incorrect.

In particular, the herbicidal action of glufosinate-ammonium alone was observed as 20%, and the herbicidal action of clethodim alone was also observed as 20%. That means that the expected action of a combination with a purely additive effect would be 40% for the combination. However, the actual observed herbicidal action the combination was 42%. Not only is this a whole 2% greater herbicidal action than expected, but it is also a 5% increase in relative herbicidal activity from what was expected (i.e.,  $[(42\% - 40\%)/40\%] \times 100\%$ ). This is a clear and unexpected increase in herbicidal activity from what was expected if the effect had only been additive without any synergy. Thus, the factual data does, in fact, affirmatively establish an unexpected synergistic result of the claimed combination.

In addition, the invention is based on the common inventive concept of selective weed control in cotton crops where the combination herbicides (A) + (B) have synergistic action against the weeds, and where the cotton crops are sufficiently tolerant to the action of (A) + (B). A specific condition of the cotton crops is that all compounds (A) are so-called "total herbicides" (i.e., normally applied non-selectively against plants (including cotton crop plants)), so that the tolerance of the cotton crop plants to the compounds (A) can only be achieved by specific tolerance genes introduced by genetic engineering or through specific mutations.

Such tolerant cotton plants have been developed for compounds (A) and are well described or even are commercially available.

Such cotton plants having a tolerance to compounds (A) are only known to have sufficient tolerance to compounds (A) in case a compound (A) is applied alone without applying other potentially damaging active ingredients. As such, it is not known whether the compounds (A) can be applied to such cotton plants with sufficient crop safety when applied together with other active ingredients which may cause phytotoxicity in principle, such as herbicidal active ingredients.

Moreover, the problem to be solved by the inventors has been not only to find herbicide combinations (A) + (B) having no or low phytotoxicity on "tolerant" cotton plants, but also to find suitable combination herbicides (B) for compounds (A) so that the combinations provide valuable enhance synergistic herbicidal action against weeds typical in cotton crops.

The solution found is not obvious in the light of cited art, since the effects of enhanced synergistic herbicidal effect and good crop tolerance goes into different directions, in principle. In other words, one of ordinary skill in the art would expect that an enhanced synergist herbicidal effect (i.e., increased herbicidal effect) would, if anything, have a negative effect on crop tolerance. The desired features of the combinations (A) + (B) found are only possible for the reason that selectivities of weed plants and glufosinate-tolerant cotton crop plants against herbicidal action of herbicides are not linearly linked to each other. In this way, the beneficial properties/results of the combinations to be used according to the invention, have not been known before and are unexpected.

The invention has been generally described in the specification and supported specifically by some working examples.

Because of the fact that the synergistic effects, and also the phytotoxicity or crop safety of cotton crops, are hardly predictable with respect to the herbicidal combinations (A) + (B), the Hacker Declaration was filed. The results shown in the Hacker Declaration clearly support the teaching of the present patent application and the unexpected results thereof.

Accordingly, Applicants respectfully assert that Examiner has failed to establish a *prima facie* case of obviousness of independent Claims 79 and 107, and corresponding Claims 80, 103, 104, 108, 115, and 116 because they are each ultimately dependent from one of Claims 79 and 107. Therefore, Applicants respectfully request that the rejection of Claims 79, 80, 103, 104, 107, 108, 115, and 116 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,180,563 to Rüegg et al. be reversed and withdrawn by the Board.

**D. CLAIMS 89, 90, 99-102, 111, AND 112 SHOULD BE ALLOWED AS BEING  
DEPENDENT FROM AN ALLOWABLE BASE CLAIM.**

On page 4 of the current Office Action, Examiner objects to Claims 99-102, 111, and 112 (and assumably Claims 89 and 90 as they relate to the same subject matter as



Claims 111 and 112) as being dependent upon a rejected base claim. These objections are respectfully traversed and believed overcome in view of the following discussion.

Claims 89, 90, 99-102, 111, and 112 have already been indicated by Examiner as allowable if rewritten in independent form. However, this is not necessary, because Claims 89, 90, 99-102, 111, and 112 are each ultimately dependent from one of independent Claims 79 and 107. As Claims 79 and 107 are allowable, so must be Claims 89, 90, 99-102, 111, and 112. Accordingly, Applicants respectfully assert that Claims 89, 90, 99-102, 111, and 112 are in allowable form as is. Therefore, Applicants respectfully request that the objection to Claims 89, 90, 99-102, 111, and 112 as being dependent upon a rejected base claim, be reversed and withdrawn by the Board.

**E. CLAIM 81-87, 91-98, 105, 106, 109, 110, 113, AND 114 SHOULD EACH BE  
REJOINED AND ALLOWED AS BEING DEPENDENT FROM AN ALLOWABLE  
BASE CLAIM.**

Withdrawn Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114 are each ultimately dependent from one of independent Claims 79 and 107. As Claims 79 and 107 are allowable, so must be Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114.

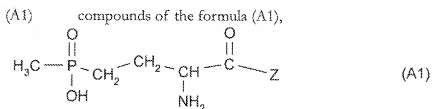
In addition, factual data has been provided in the Hacker Declaration which affirmatively establishes unexpected results with regard to the subject matter of Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114. As such, Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114 are also allowable on their own merits.

Accordingly, Applicants respectfully asserts that Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114 are in allowable form. Therefore, Applicants respectfully request Claim 81-87, 91-98, 105, 106, 109, 110, 113, and 114 be rejoined and allowed by the Board.

**VIII. CLAIMS APPENDIX****Claims 1-78 (previously canceled)**

**Claim 79 (previously presented):** A method for controlling harmful plants in cotton crops, which comprises applying a herbicide combination to the harmful plants or to the area where the harmful plants reside, wherein the herbicidal combination comprises a synergistically active content of

- (A) one or more broad-spectrum herbicides from the group of the compounds consisting of



in which Z is a radical of the formula -OH, or the salts thereof, and

- (B) one or more herbicides from the group of the compounds which consists of

- (B1) norflurazon, clomazone and trifluralin,  
(B2) bispyribac and its salts and pyriithiobac and its salts,  
(B3) quizalofop-P and its esters, quizalofop and its esters, fenoxaprop-P and its esters, fenoxaprop and its esters, fluzafop-P and its esters, fluzafop and its esters, and propaquizafop and  
(B4) sethoxydim, cycloxydim and clethodim,

and the cotton crops are tolerant to the herbicides (A) and (B) contained in the combination, optionally in the presence of safeners.

**Claim 80 (previously presented):** The method as claimed in claim 79, wherein glufosinate ammonium is employed as active substance (A).

**Claim 81 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the norflurazon is employed as component (B).

**Claim 82 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the norflurazon is employed as component (B).

**Claim 83 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the clomazone is employed as component (B).

**Claim 84 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the clomazone is employed as component (B).

**Claim 85 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the trifluralin is employed as component (B).

**Claim 86 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the trifluralin is employed as component (B).

**Claim 87 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the bispyribac-sodium is employed as component (B).

**Claim 88 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the bispyribac-sodium is employed as component (B).

**Claim 89 (previously presented):** The method as claimed in claim 79, wherein the pyriithiobac is employed as component (B).

**Claim 90 (previously presented):** The method as claimed in claim 80, wherein the pyriithiobac is employed as component (B).

**Claim 91 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the quizalofop-P-ethyl is employed as component (B).

**Claim 92 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the quizalofop-P-ethyl is employed as component (B).

**Claim 93 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the fenoxaprop-P-ethyl is employed as component (B).

**Claim 94 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the fenoxaprop-P-ethyl is employed as component (B).

**Claim 95 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the fluazifop-P-butyl is employed as component (B).

**Claim 96 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the fluazifop-P-butyl is employed as component (B).

**Claim 97 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the propaquizafop is employed as component (B).

**Claim 98 (withdrawn – previously presented):** The method as claimed in claim 80, wherein the propaquizafop is employed as component (B).

**Claim 99 (previously presented):** The method as claimed in claim 79, wherein the sethoxydim is employed as component (B).

**Claim 100 (previously presented):** The method as claimed in claim 80, wherein the sethoxydim is employed as component (B).

**Claim 101 (previously presented):** The method as claimed in claim 79, wherein the cycloxydim is employed as component (B).

**Claim 102 (previously presented):** The method as claimed in claim 80, wherein the cycloxydim is employed as component (B).

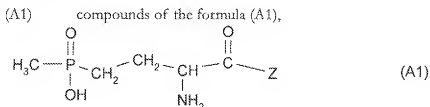
**Claim 103 (previously presented):** The method as claimed in claim 79, wherein the clethodim is employed as component (B).

**Claim 104 (previously presented):** The method as claimed in claim 80, wherein the clethodim is employed as component (B).

**Claim 105 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the herbicide combination comprises other crop protection active ingredients.

**Claim 106 (withdrawn – previously presented):** The method as claimed in claim 79, wherein the herbicide combination comprises adjuvants and formulation auxiliaries conventionally used in crop protection.

**Claim 107 (previously presented):** A herbicidal composition which comprises  
(A) one or more broad-spectrum herbicides from the group of the compounds consisting of



in which Z is a radical of the formula -OH, or the salts thereof, and

(B) one or more herbicides from the group of the compounds which consists of

(B2) bispyribac and its salts and pyriathiobac and its salts, and

(B4) cycloxydim and clethodim.

**Claim 108 (previously presented):** The herbicidal composition as claimed in claim 107, wherein glufosinate-ammonium is employed as active substance (A).

**Claim 109 (withdrawn – previously presented):** The herbicidal composition as claimed in claim 107, wherein the bispyribac-sodium is employed as component (B).

**Claim 110 (withdrawn – previously presented):** The herbicidal composition as claimed in claim 108, wherein the bispyribac-sodium is employed as component (B).

**Claim 111 (previously presented):** The herbicidal composition as claimed in claim 107, wherein the pyriithiobac is employed as component (B).

**Claim 112 (previously presented):** The herbicidal composition as claimed in claim 108, wherein the pyriithiobac is employed as component (B).

**Claim 113 (withdrawn – previously presented):** The herbicidal composition as claimed in claim 107, wherein the clefoxydim is employed as component (B).

**Claim 114 (withdrawn – previously presented):** The herbicidal composition as claimed in claim 108, wherein the clefoxydim is employed as component (B).

**Claim 115 (previously presented):** The herbicidal composition as claimed in claim 107, wherein the clethodim is employed as component (B).

**Claim 116 (previously presented):** The herbicidal composition as claimed in claim 108, wherein the clethodim is employed as component (B).

**IX. EVIDENCE APPENDIX**

A copy of U.S. Patent No. 6,180,563 to Rüegg et al. ("Rüegg") has been attached to this Appeal Brief as Exhibit A.

A declaration by Dr. Edwin Hacker ("the Hacker Declaration") has been attached to this Appeal Brief as Exhibit B.

Rüegg was cited to by the Examiner in both the non-final Office Action mailed on August 18, 2010, and the Final Office Action mailed on April 26, 2011. The Hacker Declaration was submitted along with the February 18, 2011 amendment/response to the August 19, 2010 non-final Office Action.



X. RELATED PROCEEDINGS APPENDIX

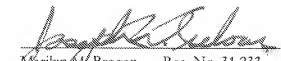
Not Applicable.

**XI. CONCLUSION**

In view of the foregoing, it is submitted that the final rejection of the Examiner based on the art of record is improper. Accordingly, it is requested that this Board reverse the Rejection Raised by the Examiner.

Respectfully submitted,

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